

of calculating the maximum investment ratio or the minimum total assets ratio.

(c) The borrower's net worth and total assets shall be determined using the balances of the respective accounts of the borrower as of December 31 of the last complete calendar year preceding the date on which the borrower's maximum investment ratio and minimum total assets ratio are calculated.

(d) All determinations required to be made under 7 U.S.C. 926 or this subpart will be made in accordance with the Uniform System of Accounts (USoA) (47 CFR part 32). References to specific USoA accounts shall include revised or replacement accounts.

§ 1744.206 Effect of subsequent failure to maintain ratios.

If an expenditure constitutes a qualified investment under the terms of this subpart, it does not cease to be a qualified investment merely because subsequently the borrower fails to maintain the maximum investment ratio or the minimum total assets ratio.

§ 1744.207 Investment not to jeopardize loan security.

A borrower shall not make a qualified investment or a rural development investment which jeopardizes:

(a) The security of loans made or guaranteed by RUS; or

(b) The borrower's ability to repay such loans under the terms and conditions as agreed.

§ 1744.208 Rural development investments before November 28, 1990.

All investments made by a borrower shall be subject to the provisions of this subpart, regardless of when the investment was made or whether it has been approved by RUS. Any restrictions required by RUS as a condition to approving a rural development investment before November 28, 1990, shall continue to be in effect to the extent that such investment exceeds the maximum investment ratio or causes the borrower to fall below the minimum total assets ratio.

§ 1744.209 Records.

(a) The records of borrowers, including records relating to qualified invest-

ments, shall be subject to the auditing procedures prescribed in part 1773 of this chapter. RUS reserves the right to review the records of the borrower relating to qualified investments to determine if the borrower is in compliance with this subpart.

(b) Borrowers shall report to RUS on the end-of-year operating report, RUS Form 479, the current status and principal amount of each qualified investment it has made or is committed to make pursuant to § 1744.202.

(Approved by the Office of Management and Budget under control number 0572-0098.)

§ 1744.210 Effect of this subpart on RUS loan contract and mortgage.

(a) Except as expressly provided in this subpart, the borrower shall comply with all provisions of its loan contract with RUS, its notes issued to RUS, and the RUS mortgage, including all provisions thereof relating to investments not covered by this subpart.

(b) Nothing in this subpart shall affect any rights of supplemental lenders under the RUS mortgage, or other creditors of the borrower, to limit a borrower's investments, loans and guarantees to levels below those permitted in § 1744.202.

(c) As used in paragraph (b) of this section, supplemental lender means a creditor of the borrower, other than RUS, whose loan to the borrower is secured by the RUS mortgage.

PART 1746—POST-LOAN POLICIES AND PROCEDURES FOR GUARANTEED TELEPHONE LOANS

Subpart A—General

1746.1 General.

1746.2 Definitions.

1746.3—1746.49 [Reserved]

Subpart B—Section 314 Loan Guarantees—Private Sector

1746.50 Legal authority.

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1746.52 Loan servicing.

1746.53 Secondary transactions.

1746.54 Borrower prepayments.

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1746.56 Payments under lender's agreement.

1746.57 Obligations of borrower.

1746.58 Replacement of documents.

1746.59—1746.99 [Reserved]

§ 1746.1

AUTHORITY: 7 U.S.C. 901 *et seq.*; 7 U.S.C. 1921 *et seq.*; Pub. L. 103-354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

SOURCE: 56 FR 42492, Aug. 27, 1991, unless otherwise noted.

Subpart A—General

§ 1746.1 General.

(a) This part establishes specific post-loan policies, procedures and requirements that apply to guaranteed telephone loans. Pre-loan policies, procedures and requirements are in 7 CFR part 1739.

(b) Additional post-loan policies, procedures and requirements that apply to both guaranteed and insured loans are set forth in 7 CFR part 1744. Borrowers must also comply with all other applicable RUS regulations.

(c) This part supersedes those portions of RUS Bulletin 320-22, Guarantee of Loans for Telephone Facilities, and supplements thereto that are in conflict.

§ 1746.2 Definitions.

The definitions in 7 CFR parts 1735, 1737 and 1744 are applicable to this part.

§§ 1746.3—1746.49 [Reserved]

Subpart B—Section 314 Loan Guarantees—Private Sector

§ 1746.50 Legal authority.

Pursuant to section 314 of the RE Act, RUS may provide financial assistance to borrowers for the purposes set forth in section 201 of the RE Act by providing 90 percent guarantees of loans made by any legally organized lending agency is defined in 7 CFR 1739.52. RUS may not provide a guarantee under this subpart for a loan made by the Federal Financing Bank, the Rural Telephone Bank, or any other lending agency that is an agency or instrumentality of the United States.

§ 1746.51 Purpose.

This subpart sets forth post-loan policies and procedures relating to an executed Lender's Agreement between RUS and a private lender for a telephone loan guaranteed under section 314 of the RUS Act.

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§ 1746.52 Loan servicing.

(a) The lender shall be responsible for the following:

(1) Servicing the entire loan in accordance with the Lender's Agreement, notwithstanding the fact that another party may hold all or part of the guaranteed portion of the loan.

(2) Ensuring that all obligations of the borrower to the lender under the lender's loan agreement, Loan Note, and the security instrument have been fulfilled.

(3) Ensuring that it has obtained RUS approval to advance funds prior to each advance of funds. Such approvals will relate to RUS's interests and responsibilities and will not be intended in any way to represent or protect the interests of the lender.

(4) Billing and collecting loan payments from the borrower.

(5) Notifying the RUS Area Operations Branch promptly, in writing, when any default in the payment of principal or interest due on a loan has been in effect for five calendar days or more. (See 7 CFR 1700.1 for a listing of states served by each Area Operations Branch.) In the case of such monetary defaults, the lender shall contact the borrower to determine the nature of the problem, and subsequently submit the following to the RUS Area Operations Branch:

(i) A report, submitted promptly, setting forth the lender's views as to the reasons for the default, how long the borrower is expected to be in default, and the corrective actions being taken by the borrower to achieve a current debt service position; and

(ii) A proposal, submitted promptly for RUS's approval, outlining actions to be taken by the lender and the borrower to cure the default if the default has been in effect for 30 calendar days or more. Such proposal must be delivered to RUS within 35 calendar days of the date of the default.

(6) Notifying the RUS Area Operations Branch promptly, in writing, if the borrower:

(i) Has failed to pay any local, state or federal taxes owed; or

(ii) Does not have adequate property and liability insurance based on prudent business practice.

(7) Reviewing the borrower's annual audited financial statement and providing a summary evaluation to the RUS Area Operations Branch within 60 days of receipt of the document.

(8) Notifying the RUS Area Operations Branch promptly if the borrower has not provided the required annual audited financial statement.

(9) Notifying the RUS Area Operations Branch promptly of a prepayment of all or a portion of the Loan Note by the borrower.

(10) Providing written quarterly loan servicing reports to the Director, Financial Operations Division, RUS, within 10 working days of the end of the quarter. The reports shall include the amount of funds advanced for each Loan Note during the quarter, the date of each advance, applicable variable or fixed interest rates for the current quarter, record of variable interest rates for the past quarter, outstanding principal at the beginning and end of the quarter, accrued interest, the amount of principal and interest paid during the quarter, and other information that RUS may require.

(11) Assuring that the funds are used for the purposes approved in the loan, except that the lender may rely on RUS for said assurance if RUS has agreed in advance in writing.

(b) In the event of a monetary default, if RUS does not agree with the proposal submitted by the lender to cure the default, RUS will work with the lender in an effort to develop a mutually satisfactory plan. The plan, including any initiative to accelerate the Loan Note, is subject to the written approval of RUS.

(c) Upon notice to the lender, RUS may assume loan servicing responsibilities for the entire loan or the guaranteed portion, or require the lender to assign such responsibilities to a different entity, if the lender fails to perform its loan servicing responsibilities under the Lender's Agreement, or if the lender becomes insolvent, makes an admission in writing of its inability to pay its debts generally as they become due, or becomes the subject of proceedings commenced under the Bankruptcy Reform, Act of 1978 (11 U.S.C. 101 *et seq.*) or any similar applicable Federal or state law, or is no

longer is in good standing with its licensing authority, or ceases to meet the eligibility requirements of 7 CFR 1739.52. Such negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed, and includes not only a failure to act but also not acting in a timely manner.

(d) If loan servicing is assumed by RUS or reassigned to another entity, the lender shall cease collecting loan servicing fees for that portion of the loan for which servicing has been assumed or reassigned, and loan servicing fees shall be paid to RUS or such other entity.

(e) If RUS determines that a lender is negligent in its required loan servicing responsibilities under the Lender's Agreement, such negligent servicing will cause the guarantee to be unenforceable by the lender to the extent such negligent servicing is determined to have caused a loss. If all or part of the guaranteed portion of the loan has been assigned to a holder, such negligent servicing shall not affect the holder's rights under the Assignment Guarantee Agreement, except that RUS's guarantee does not extend to guaranteeing that a lender will remit to a holder the holder's legitimate share of any payments made by the borrower.

(f) The lender shall reimburse RUS for any payments made to a holder under the guarantee on account of negligent servicing.

§ 1746.53 Secondary transactions.

(a) As set forth in 7 CFR 1739.62, lenders are authorized to assign to a holder up to 100 percent of the guaranteed portion of a loan, provided the loan is not in payment default.

(b) The initial assignment by a lender requires prior written approval from RUS. Subsequent assignments by holders do not require RUS approval.

(c) An assignment shall entitle the holder to all of the lender's rights under the Loan Note Guarantee to the extent of the guaranteed loan purchased. However, the lender shall remain responsible for servicing the entire loan and shall continue to be

bound by all obligations under the Loan Note Guarantee and the Lender's Agreement.

(d) The borrower, its principal officers, members of the borrower's board of directors, and members of the immediate families of said officials shall not be a holder of the borrower's loan.

(e) An Assignment Guarantee Agreement, prepared by the lender using appendix B to 7 CFR part 1739 as a guide to the extent practicable, will be executed between RUS, the lender and the holder evidencing the amount of the guaranteed portion of the loan assigned. The lender shall send the original of the Assignment Guarantee Agreement to the holder and a conformed copy to RUS.

(f) The holder, and any subsequent holder, with prior written approval of the lender, may reassign its unpaid guaranteed portion of the loan. The lender shall maintain adequate records to enable verification, at any time, as to the legal holder of the assigned portion of the loan.

(g) The assigned portion of a loan may be held by only one holder at a time. This, however, does not prohibit two or more entities from consolidating into a single entity as holder.

(h) As set forth in 7 CFR 1739.53, holders are prohibited from obtaining any part of the guaranteed portion of the loan with proceeds from any obligation the interest on which is excludable from income under chapter I of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)(21) *et seq.*).

§ 1746.54 Borrower prepayments.

(a) Loans under this subpart may be prepaid in full or in part in accordance with the terms of the Loan Note or loan agreement. Any prepayment must be on both the guaranteed and unguaranteed portions of the loan, in proportion to the outstanding principal balances of said portions. Depending on the lender, there may be a premium associated with such prepayment.

(b) Prepayment of a guaranteed loan under this subpart shall be accompanied by a simultaneous prepayment of any other loan made concurrently with such loan, including any RUS insured or guaranteed loan, or any Rural Telephone Bank loan, if requested by

the RTB. Such prepayment shall be on a pro rata basis according to the outstanding principal balances of said loans and in accordance with the specific terms of the joint mortgage or other security instrument that provides common security for such loans.

§ 1746.55 Refinancing.

With RUS approval, loans under this subpart may be refinanced under the Loan Note Guarantee if, in RUS's sole judgment, such refinancing will not increase RUS's loan guarantee risk or otherwise adversely affect the government's interests.

§ 1746.56 Payments under lender's agreement.

(a) In the case of both monetary and non-monetary events of default, RUS will work with the borrower and the lender in an effort to eliminate the borrower's default as soon as possible.

(b) Non-monetary defaults will not trigger any payments by RUS.

(c) RUS's guarantee is limited to paying the amount by which payments made by the borrower, any amounts received from set-offs, and any proceeds received from liquidation are less than the principal and scheduled interest owed on the guaranteed portion of the loan. RUS's guarantee does not cover penalty interest or a lender's collection costs, although certain reasonable liquidation costs approved by RUS may be deducted from the gross proceeds from the liquidation of collateral, as provided in the Lender's Agreement.

(d) In the event of a monetary default by the borrower;

(1) Any payments made by the borrower on any loan or other obligations of the borrower held by the lender shall be applied pro rata to said obligations secured under the mortgage based on the outstanding principal balances thereof; and

(2) Any payments made by the borrower on the guaranteed loan, any amounts received from set-offs, and any proceeds received from liquidation shall be applied first to reimburse RUS for any payments made under the guarantee. Any amounts remaining after said application shall be applied first to the guaranteed portion of the loan, up to the full amount owned on said

portion, and second to the unguaranteed portion of the loan.

(e) If a holder has been assigned all or any part of the guaranteed portion of the loan, payment to the holder will proceed as follows:

(1) After a monetary event of default has been in effect for 60 calendar days from the payment due date, the holder may request in writing that the lender repurchase the assigned portion of the loan. Within 30 calendar days of receipt of such demand, the lender shall either repurchase the assigned portion of the loan or inform the holder and RUS in writing that it does not intend to repurchase said portion.

(2) RUS encourages lenders to repurchase the assigned portion of a loan in monetary default. Such repurchase will enhance a lender's ability to pursue payment remedies, with RUS's approval, including but not limited to principal deferments, changes in interest rates, or reamortization of payments.

(3) If the lender does not repurchase the loan from the holder as provided in paragraph (e) (1) of this section, upon written demand by the holder RUS will, in accordance with the Assignment Guarantee Agreement, either:

(i) Pay the outstanding principal balance owed, plus accrued interest, that the borrower has failed to pay with respect to the portion of the guaranteed loan held by the holder; or

(ii) Pay that portion of principal and interest payments owed the holder that the borrower has failed to pay, plus such principal and interest payments owed the holder, as due, that the borrower fails to pay in the future.

(4) RUS will make payment under paragraph (e) (3) of this section within 30 calendar days of receiving the written demand of the holder and verification of the identity of the legal holder and the amounts owed.

(5) Payments by RUS will be made to the lender, who shall be responsible for paying the holder.

(6) RUS's obligation to make payments, as set forth in the Assignment Guarantee Agreement, relates only to the failure of a borrower to make principal and interest payments required under the guaranteed Loan Note. RUS's guarantee does not extend to

guaranteeing that the lender will remit to the holder principal and interest payments made by the borrower, or by RUS under the guarantee. Nor does RUS guarantee any premiums that may be associated with secondary transactions.

(f) If the lender holds any part of the guaranteed portion of the loan and a monetary event of default has been in effect for 180 calendar days from the payment due date, and the lender has not been able to work out a satisfactory cure of the default, RUS will make payment to the lender under one of the methods set forth below within 30 calendar days of written demand by the lender, provided the lender has taken all reasonable steps in an attempt to cure the default and has met all of its obligations under the Lender's Agreement:

(1) Pay the lender the outstanding principal balance, plus accrued interest, that the borrower has failed to pay with respect to the portion of the guaranteed loan held by the lender; or

(2) Pay the lender that portion of principal and interest payments owed on the guaranteed portion of the loan held by the lender that the borrower has failed to pay, plus such principal and interest payments owed on said guaranteed portion, as due, that the borrower fails to pay in the future.

(g) In considering its payment options, RUS will select, on a case by case basis, the option that is in the best interest of the Government.

(h) When RUS has made a payment under the Loan Note Guarantee, it will establish in its accounts the amount of the payment as due and payable from the borrower, with interest accruing on all amounts owed, at the rate of interest specified in the Loan Note.

§ 1746.57 Obligations of borrower.

(a) Borrowers must meet the applicable requirements of this subpart, subpart B of 7 CFR part 1739, and all other RUS regulations.

(b) A borrower must provide the lender with information that is reasonably required to make and service the loan.

§ 1746.58 Replacement of documents.

RUS may issue a replacement Loan Note Guarantee, Lender's Agreement

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or Assignment Guarantee Agreement that has been lost, stolen, destroyed, mutilated or defaced upon receipt of documentation, satisfactory to RUS, evidencing the loss of the original document. The lender shall coordinate the replacement of the document and submit the following documentation to RUS:

(a) A certificate of loss properly notarized which shall include:

(1) The legal name and address of lender and the capacity of the person certifying.

(2) The legal name and present address of the owner who is requesting the replacement document.

(3) Identification of the document, including the name of the borrower, face amount of Loan Note, date of the Loan Note, present balance of the loan, and percentage of guarantee. If an assignment is involved, identification shall also include the name of the current holder and any previous holders and the percentage of the guaranteed portion of the loan assigned. If the current holder is not the same as the original holder, a copy of the endorsement of each previous holder in the chain of transfer shall be included.

(4) A full statement of the circumstances of the loss, theft or destruction of the document.

(b) An indemnity bond acceptable to RUS shall accompany the request for replacement of the document. The bond shall be with surety except when the outstanding principal balance and accrued interest due the holder is less than \$1,000,000. Such outstanding balance shall be certified by the lender in writing. All indemnity bonds shall be issued or payable to the United States of America acting through the RUS. The bond shall be in an amount not less than the unpaid principal and interest. The bond shall save RUS harmless against any claim or demand that might arise or against any damage, loss, costs or expenses that might be sustained or incurred by reasons of the loss or replacement of the instruments.

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§§ 1746.59–1746.99 [Reserved]

PART 1748—POST-LOAN POLICIES AND PROCEDURES FOR INSURED TELEPHONE LOANS [RESERVED]

PART 1751—TELECOMMUNICATIONS SYSTEM PLANNING AND DESIGN CRITERIA, AND PROCEDURES

Subpart A—[Reserved]

Sec.

1751.1—1751.99 [Reserved]

Subpart B—State Telecommunications Modernization Plan

1751.100 Definitions.

1751.101 General.

1751.102 Modernization Plan Developer; eligibility.

1751.103 Loan and loan advance requirements.

1751.104 Obtaining RUS approval of a proposed Modernization Plan.

1751.105 Amending a Modernization Plan.

1751.106 Modernization Plan; requirements.

AUTHORITY: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*; Pub. L. 103-354, 108 Stat. 3178 (7 U.S.C. 6941 *et seq.*).

SOURCE: 60 FR 8174, Feb. 13, 1995, unless otherwise noted.

Subpart A—[Reserved]

§§ 1751.1—1751.99 [Reserved]

Subpart B—State Telecommunications Modernization Plan

§ 1751.100 Definitions.

As used in this subpart:

Bit rate. The rate of transmission of telecommunications signals or intelligence in binary (two state) form in bits per unit time, e.g., Mb/s (megabits per second), kb/s (kilobits per second), etc.

Borrower. Any organization that has received an RUS loan designation number and which has an outstanding telephone loan made by RUS or the Rural Telephone Bank, or guaranteed by RUS, or which has a completed loan application with RUS.